

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Fruitridge Vista Water Company, a trust, for an order: 1) establishing a moratorium on new service connections; and 2) clarification of Tariff Rule 15 regarding payment for new facilities servicing new applicants.	Application 05-10-005 (Filed October 7, 2005)
Sacramento Housing and Redevelopment Agency and the Housing Authority of the County of Sacramento, Complainants, vs. Fruitridge Vista Water Company, Defendant.	Case 05-10-007 (Filed October 11, 2005)
County of Sacramento, Complainant, vs. Fruitridge Vista Water Company, Defendant.	Case 05-10-011 (Filed October 7, 2005)
David R. Gonzalez & Donna L. Gonzalez, Complainants, vs. Fruitridge Vista Water Company, Defendant.	Case 05-09-011 (Filed September 6, 2005)
Mercy Properties California, Complainant, vs. Fruitridge Vista Water Company, Defendant.	Case 05-09-012 (Filed September 6, 2005)
Victoria Station, LLC, Complainant, vs. Fruitridge Vista Water Company, Defendant.	Case 05-09-027 (Filed September 22, 2005)
Park Place LLC, Complainant, vs. Fruitridge Vista Water Company, Defendant.	Case 05-11-015 (Filed November 15, 2005)

REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

As per the schedule set by the assigned Administrative Law Judge (ALJ) Glen Walker,¹ the Division of Ratepayer Advocates (DRA) files this Reply to the Settling Parties' Opening Brief filed on March 23, 2006. For purposes of this Reply, DRA will hereafter refer to such Brief as the Fruitridge Opening Brief or "FOB" and the Fruitridge Vista Water Co. as "FVWC."²

In summary the FOB fails to prove that the proposed settlement is reasonable, consistent with the law, and beneficial to ratepayers. DHS will grant and loan FVWC sufficient public monies to purchase water to serve the existing ratepayers. The complainants are willing to pay a special facilities fee for purchasing water and/or other means to meet their needs. The record shows that FVWC has the available resources and the legal duty to serve the existing and new ratepayers, putting aside any proposal to increase rate base. Thus, the settlement's rate base proposals are irrelevant and immaterial to the question whether FVWC can and must serve the ratepayers.

The FOB fails to rebut DRA's showing that the Commission Decision (D.) 06-03-015, dated March 2, 2006, prohibits FVWC from profiting "in any way through the receipt of public funds" such as by including grant-funded plant or other assets in rate base or recovering gain from the disposition of such grant-funded assets. Further the FOB provides no legal justification for the settlement's proposal to deprive ratepayers of an opportunity to be heard or for usurping the Commission's ratemaking and reviewing authority. If the Commission approves the settlement, the settlement provides that "this ratebase treatment of Fruitridge Vista plant, up to \$5.0 million, is not subject to future

¹ TR 158: 28 – 159:1, ALJ Walker/Comm.

² The term "Section" means a statutory provision of the California Public Utilities Code, unless otherwise stated; and "Rule," a provision of the Commission Rules of Practice and Procedure.

litigation, either in response to an advice letter or in future general rate cases or otherwise.”³

The FOB admits that ratepayers will experience a doubling or more of current rates, \$15.69 per month to over \$32 per month, if the Commission adopts the settlement. This rate shock is unjustified when FVWC has engaged in a pattern and practice of neglecting its water system and otherwise failing its duties as a Commission-regulated water utility.

II. ARGUMENTS AND AUTHORITIES

A. DHS Is Providing FVWC More Than Sufficient Amount Of Public Monies To Provision The Existing Ratepayers Without Impacting Rate Base.

DHS is providing FVWC with a \$5.12 million DWTRF and providing an interest free SRF loan of \$3.27 million. These public funds total to \$8.39 million, a figure that far exceeds the FOB’s own estimate of its expenses for buying water to meet existing the ratepayers’ needs. As DHS testified, the DWTRF grant and the SRF loan are designed to enable FVWC to comply with the DHS and CRWQCB compliance orders, purchase enough water from Sacramento to serve existing ratepayers, and improve its infrastructure mains, pumps, and interconnects.⁴

The FOB states that FVWC’s existing ratepayers need approximately 2.11 mgd which could be purchased from the City of Sacramento at a cost of \$3,696-631. The balance of 1.13 mgd would be derived ⁵ from a separate purchase. To finance the 1.13 mgd purchase, the settlement proposes to immediately increase rate base in the amount of \$ 1.98 million.⁶ Adding the two volumes of water needed and their cost as stated above, FVWC needs approximately \$5.67 million to purchase 3.24 mgd to serve its existing ratepayers.

³ Ex 1, Prop. Settlement at 8; *see DRA Op. Br.* at 15 & note 36.

⁴ Tr. 76:27 – 77:22, C. Lischke/DHS.

⁵ *FOB* at 11.

⁶ *Id.*

Thus, FVWC does not need to rate base \$1.98 million now and an additional \$5 million later to pay for the necessary water. The FOB claims that \$1.98 million is necessary to add to rate base to pay for 1.13 mgd of additional water. However, no evidence was presented to explain why the \$1.98 million is necessary, when the SRF loan is available. Further, FVWC has failed to show how the \$1.98 million was calculated and its source, e.g., investor capital. Without any justification for the \$1.98 million, it is unreasonable and arbitrary to allow FVWC to recover through rates a \$1.98 million increase to rate base at 11%. Therefore, the Commission should reject the rate base proposals.

The FOB states that the settlement “sets forth a comprehensive, global solution to the water issues facing the Company,” that apparently goes beyond meeting the water needs of the existing ratepayers. The \$12 million solution consists of:

- (a) \$6.3 million for three new wells in safe areas and an improved distribution system; and (b) \$5.7 million to buy into the City of Sacramento's surface water system, allowing two major interconnections to City water.

In a Commission general rate case review, FVWC would have to present work papers, comparative analyses of cost effective options, or other showing of facts to prove the reasonableness of the \$6.3 million. Commission processes would require FVWC to explain how the \$1.98 million is calculated and to justify whether the \$5 million litigation recoveries belong to FVWC instead of the ratepayers. Moreover, the settlement does not describe FVWC’s existing or proposed capital structure. None of these factual showings are included in this proceeding. Instead, the settlement would obviate any Commission requirements to justify its rate base proposals or its “global solution.” Also, FVWC also wants to preclude any future legal challenge its rate base proposals, if the Commission were to adopt the settlement.

Therefore, the Commission must reject the settlement as unreasonable. The record demonstrates that DHS is providing FVWC more than enough public monies to meet existing ratepayer needs without having to augment rate base. Further the settlement has failed to justify the additional \$6.3 million figure.

As for the 550 new ratepayers, the settlement states their needs can be met by imposing on them a residential special facilities fee rate. This would be derived by dividing the incremental new supply cost for new development of \$3.87 million by the number of currently planned new development residential units (550 units). The commercial special facilities fee utilizes the same formula for new projects as the County of Sacramento.⁷ Therefore, the settlement's rate base proposals are not relevant or material to meeting the needs of the imminent ratepayers. The Commission should not be misled by the argument that it is somehow impeding needed development in the neighborhood if it rejects a deeply flawed and illegal settlement.

The availability of \$8.39 million of public monies also rebuts FVWC's claim that up to \$5 million needs to be added to rate base if and when FVWC were to recover damages in its pollution lawsuit. Earning a 10% rate of return, the \$5 million rate base increase would raise the residential monthly rates by nearly \$10, from \$22.25 to \$32.22, assuming the surcharge for the SRF loan and the rate increase from the \$1.98 million rate base increase were included. By comparison, utilizing the \$8.39 million of DWTRF and SRF public monies to buy the needed water and make infrastructure improvements would not raise rate base and only require a \$2.18 monthly surcharge.⁸ The settlement fails to justify the reasonableness of doubling current rates, when DHS is presenting FVWC with an alternative that would place far less rate burdens on the ratepayers. The Commission should therefore reject the \$5 million rate base proposal.

B. The FOB Fails To Rebut DRA's Showing That The Settlement Violates The Law.

The FOB claims, "[t]his proceeding does not include grant money from Proposition 50 or other grant programs."⁹ DHS Carl Lischeske's testimony directly contradicts this assertion: "It's -- it [DWTRF] is a grant, unless they're able to recover the

⁷ Ex. 1, *Prop. Settlement* at 5.

⁸ The \$2.18 month surcharge would last only until the SRF loan is repaid. Contrastingly, FVWC would indefinitely recover through rates the \$5 million rate base increase because FVWC claims the \$5 million is an intangible asset. See *FOB* at 9.

⁹ *FOB* at 12.

money, in which case it's due and payable insofar as they collect sufficient money.”¹⁰ Therefore, the settlement is improperly proposing to include the \$5 million of DWTRF grant money in rate base contrary to D.06-03-015. The Commission should reject the settlement as inconsistent with established Commission policy and practices. Allowing a private investor owned utility to place public funds into rate base would set an exceedingly poor precedent.¹¹

The FOB argues that if and when FVWC were to repay the DWTRF grant with litigation recoveries, the DWTRF ceases to be grant money.¹² However, it is irrefutable that any recoveries from FVWC’s pollution lawsuit are presently indeterminate, non-existing, and conjectural. That pollution lawsuit is a jury trial involving over 20 law firms and will begin in April 2006.¹³ Even FVWC would not speculate about the outcome of the trial.¹⁴ If FVWC cannot predict whether any litigation recoveries will be forthcoming, how and why should the Commission adopt a settlement that is based on such an uncertainty? Therefore, the Commission should reject the settlement as premature. The settlement is in effect an attempt to force the Commission’s hand to approve a “deal” that disregards existing Commission policies and procedures and substantially burdens a low-income community. FVWC can raise this issue when it is established if, when, and how much FVWC will recover in litigation.

The FOB fails to rebut DRA’s showing that the settlement proposes to deprive the Commission of its ratemaking authority. First the settlement would have the Commission adopt FVWC’s rate base proposals without presenting the justification required by Section 454. The FOB disregards addressing Section 454. Further, Section 451 requires a showing that a proposed rate increase is fair and reasonable. The FOB offers no justification for doubling current monthly rates under the \$12 million “global”

¹⁰ TR 79:14 – 16, C. Lischeske/DHS.

¹¹ The FOB also did not refute Assembly member David Jones’ testimony that the legislative intent of the statute authorizing the DWTRF is to prohibit utilities from earning a profit on such grants. *Cf* Tr.40: 9 – 41:18, D. Jones/DRA and *FOB* at 13.

¹² *FOB* at 13.

¹³ *See DRA Op.Br.* at 15–16.

¹⁴ TR 50:26 – 51:9, Cook/FVWC.

solution, whereas the DWTRF and SRF funding involved only a \$2.18 monthly surcharge and no rate basing. The Commission cannot countenance this attempted usurpation of its ratemaking authority.

The FOB cites Sections 451 and 456 in support of the settlement.¹⁵ However, Section 451 imposes a legal duty on FVWC to provision water. The FOB does not reconcile Section 451's mandate with FVWC's threat to refuse serving if the Commission does not unconditionally adopt all of the settlement.¹⁶

Section 456 provides in part that "[t]he commission may make or permit such arrangement with any public utility as it deems wise." The FOB fails to explain why it would be wise for the Commission to adopt a settlement that would foreclose having to justify a doubling of current monthly rates and are proposed under FVWC's threat of depriving ratepayers of needed water. The Commission must resist FVWC's attempt at extortion and reject the settlement.

C. The FOB Admits Harm To The Ratepayers.

The FOB confirms DRA's showing that under the settlement the monthly residential rates would more than double. As Assembly Member D. Jones testified, "The settlement agreement actually contemplates a two-phase rate increase, which could go as high as \$30."¹⁷

The first phase would consist of the following events. When FVWC receives the SRF loan, a surcharge of \$2.18 per month per ratepayer would be imposed, and when under the settlement the \$1.98 million is added to rate base rates would jump again by \$4.38 per month. These events would raise current residential monthly rates from \$15.69 to \$22.25 by an increment of \$6.56. The second phase would occur if and when FVWC were to repay the DWTRF grant, up to \$5 million would be added to rate base. The cumulative effect would be to raise monthly rates from \$22.25 to \$32.22 per ratepayer.¹⁸

¹⁵ *FOB at 14.*

¹⁶ Ex. 1, Prop. Settlement at 9.

¹⁷ TR 43:12 – 17, D. Jones/DRA.

¹⁸ *FOB at 10.*

The FOB does not refute DRA's showing that FVWC has for years neglected improving the water system and seeking rate recovery for putting the owners' monies at risk. The Settlement proposal unabashedly rewards FVWC's owners and rewards them handsomely for that neglect. It is a basic principle of equity that those with unclean hands should not profit from their misconduct. Thus on these grounds alone the settlement should be rejected.

The letters in Exhibit 3, the ratepayers signed opposition to the settlement's rate base proposals, evidence the widespread ratepayer dissatisfaction with FVWC's apparent abandonment of the water system. The FOB entirely disregards Exhibit 3, which therefore stands unrefuted. As DRA has argued in its Opening Brief, it is inequitable to double ratepayers' rates when in 2000, FVWC sought a rate recovery not for any capital improvements but mostly for management salary increases of up to \$190,000.

Therefore, the Commission should reject the settlement. FVWC and its owners have refused to invest in capital improvements to the water system. The ratepayers testifying at the hearing and included in Exhibit 3 attest to the apparent abandonment of the system. The Commission should not adopt a settlement that ostensibly appears to improve the water system but actually is a plan to earn a profit from the use of the DWTRF grant and a SRF loan.

III. CONCLUSION

The FOB claims "[i]f this Settlement Agreement is not approved, there is no readily apparent alternative solution."¹⁹ This is inaccurate. The record proves that FVWC has available \$8.39 million in DWTRF and SRF public monies. This is amply sufficient to pay the \$5.7 million that the FOB shows as the cost for provisioning the existing ratepayers. A special facilities fee can be imposed to meet the water needs of the anticipated 550 new ratepayers. The purported \$12 million comprehensive solution should be addressed when and if FVWC invests its own capital to improve the infrastructure. FVWC's threat to refuse to serve its customers if the Commission does not unconditionally adopt all of the settlement is in contempt of the law, the Commission,

¹⁹ *FOB* at 3.

and its existing and prospective ratepayers. This type of blatant defiance should be dealt with severely by the Commission. The Commission should reject the settlement and order FVWC to fulfill its legal duty to serve.

Respectfully submitted,

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March 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** in **A.05-10-007 et al.** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on March 27, 2006 at San Francisco, California.

/s/ ALBERT HILL

Albert Hill

N O T I C E

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